Paglinawan et al v. Frey et al
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06-CV-00099-SUP E-F

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MICHAEL W. DO... S
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PILAR MORE,

Plaintiff,

v.

JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., and VINTAGE ANCHOR PUBLISHING, INC.,

Defendants.

06C 0934

JUDGE COAR

MAGISTRATE JUDGE DENLOW

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, defendants Doubleday & Company, Inc. ("Doubleday") and Random House, Inc. ("Random House") (collectively "Defendants") hereby remove to this Court the above-styled action, pending as Case No. 06-CH-00772 in the Circuit Court of Cook County, Illinois County Department, Chancery Division ("the State Court Action"). As grounds for removal, Defendants states as follows:

Factual Background

1. On January 12, 2006, Plaintiff Pilar More filed the State Court Action in the Circuit Court of Cook County, Illinois County Department, Chancery Division.

2. Defendant Doubleday was served with a summons and complaint ("Cmplt.") on January 27, 2006. To date, defendant Random House has not been served with a summons and complaint.

3. The complaint arises out of the publishing and marketing of the book "A Million Little Pieces" (the "Book") written by defendant James Frey. (Cmplt ¶ 1).

4. The complaint contains a single count which seeks relief against defendants for alleged violations of the Illinois Consumer Fraud Act, 815 ILCS 505/2.[1]

5. Although Plaintiff does not indicate the state of her residence in the Complaint, Plaintiff seeks relief pursuant to the Illinois Consumer Fraud Act and filed the State Court Action in Illinois. Accordingly, Defendant presumes Plaintiff is a citizen of the State of Illinois.

6. Defendant Random House is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.

7. Defendant Doubleday is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York., and thus is a citizen of New York for these purposes.

8. Defendant Frey is a citizen of the State of New York.

9. Plaintiff seeks to pursue her claims on behalf of a nationwide class of "all persons who purchased the book 'A Million Little Pieces' written by James Frey. . ." (Cmplt. ¶ 8).

[1] In addition to defendants Frey, Doubleday, and Random House, the Complaint purports to name as defendants "Knopf Publishing Group, Inc.," and "Vintage Anchor Publishing, Inc.," neither of which are corporate entities. Alfred A. Knopf, Vintage Books, and Anchor Books are divisions of Random House, Inc. Defendants Doubleday and Random House will move at the appropriate time to have these alleged parties dismissed from the action.

Federal Jurisdiction under the Class Action Fairness Act

10. Application of CAFA. The Court has original jurisdiction of this case pursuant to the Class Action Fairness Act of 2005 ("CAFA" or "the Act"). CAFA creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and the number of members of all proposed plaintiff classes exceeds 100. 28 U.S.C. § 1332(d)(2)(A) and (d)(5).[2] As explained below, each of these criteria are met here.

11. Amount in Controversy. The aggregate amount in controversy in this case exceeds $5,000,000, exclusive of interest and costs. Plaintiff seeks to recover under the Illinois Consumer Fraud Act for alleged "unfair and deceptive practices perpetrated on millions of persons." (Cmplt. ¶ 1). In addition to injunctive relief concerning future advertising and a complete accounting of sales, Plaintiff seeks to recover "appropriate compensatory and punitive damages" (Cmplt. p. 6), which presumably include the purchase price of the Book. Based on sales of the Book, the amount in controversy exceeds the $5,000,000 threshold. (Declaration of Donald Weisberg, Exhibit B hereto, at ¶ 5).[3] The book was sold in both hardcover and paperback editions. *Id.* at ¶ 4. More than 2.5 million copies of the paperback edition were sold with a suggested retail price of $14.95. *Id.* at ¶ 5. These figures demonstrate that in excess of $5,000,000 is at issue in this case. *Id.*

---

[2] CAFA applies to any action commencing on or after February 18, 2005 – the date when CAFA was enacted. *See* CAFA § 9 ("The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.")

[3] Defendants deny that Plaintiff has stated a claim or that certification of a statewide or nationwide class would be appropriate. Defendants further deny that Plaintiff or any putative class member is entitled to any relief whatsoever.

12. Citizenship of the Parties. There is diversity of citizenship between a member of Plaintiff's putative class and defendants Doubleday and Random House:

a. Plaintiff appears to be a citizen of Illinois and there are putative plaintiffs in all 50 states. (*See* D. Weisberg Dec., Ex. B, at ¶ 6.)

b. Defendants Doubleday and Random House are New York corporations with their principal places of business in New York, New York, and thus are citizens of New York for these purposes.

c. Defendant Frey is a citizen of the State of New York.

d. Accordingly, this action is a class action where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

13. Number of Class Members. As the above figures indicate, there are more than 100 class members.

14. Mandatory Jurisdiction. CAFA classifies qualifying class actions (i.e., ones in which the $5 million amount-in-controversy is met) by the number of class members located in the state where the action is filed and the citizenship of the defendants. Where less than 1/3 of the class members are located in the state where the action is filed, federal courts are required to accept jurisdiction. *See* 28 U.S.C. § 1332(d)(2). Where more than 1/3 but less than 2/3 of the class members are located in the state where the action is filed, courts are required to apply a group of factors to determine whether to accept jurisdiction. *See* 28 U.S.C. § 1332(d)(3). Where more than 2/3 of the class members are located in the state where the action is filed and

certain other criteria are met, courts are required to decline jurisdiction. *See* 28 U.S.C. § 1332(d)(4). In this case, federal jurisdiction over this action is mandatory, not permissive, under CAFA because defendants Doubleday and Random House are not citizens of Illinois and less than 1/3 of the class members are citizens of Illinois. *See* D. Weisberg Dec., Ex. B, at ¶ 6.; 28 U.S.C. § 1332(d)(3) and (d)(4).

Procedural Matters

15. Removal is Timely. A notice of removal may be filed within 30 days after the defendant receives a copy of the initial pleading, motion, or other paper from which it may be ascertained that the case is removable. 28 U.S.C. § 1446(b). The United States Supreme Court has held that the 30-day period prescribed in section 1446(b) runs from the date of formal service of the complaint. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355-56 (1999). Defendant Doubleday was served no earlier than January 27, 2006, and defendant Random House has not yet been served. This notice of removal is thus timely, as the 30-day period for removal for defendant Doubleday does not expire until February 27, 2006.

16. Removal to Proper Court. This Court is part of the "district and division embracing the place where" the State Court Action was filled – Cook County, Illinois. 28 U.S.C. § 1446(a).

17. Consent Not Required. Pursuant to 28 U.S.C. § 1453(b), the consent of other defendants to this removal is not required.

18. Pleadings and Process. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is "a copy of all process, pleadings, and orders served upon" defendant Doubleday. No defendant has answered or otherwise filed a responsive pleading to the complaint.

19. Filing and Service. A copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Cook County, Illinois, and is being served on all counsel of record, consistent with 28 U.S.C. § 1446(d). The Circuit Court of Cook County, Illinois, is located within this district.

WHEREFORE, defendants Random House, Inc. and Doubleday & Company, Inc. respectfully remove this action, now pending in the Circuit Court of Cook County, Illinois County Department, Chancery Division to the United States District Court for the Northern District of Illinois.

Respectfully Submitted,

RANDOM HOUSE, INC. and
DOUBLEDAY & COMPANY, INC.

By: ______________________

One of Their Attorneys

Mark B. Blocker
Michael C. Andolina
Marissa J. Reich
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Of counsel:

Stephen G. Contopulos
Jennifer A. Ratner
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
(213) 896-6000

Dated: February 21, 2006

EXHIBIT A

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served By Publication
SUMMONS

2121 - Served
2221 - Not Served
2321 - Served By Mail
2421 - Served By Publication
ALIAS - SUMMONS

(Rev.12/3/01) CCG 0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

(Name all parties)

PILAR MORE,

Plaintiff,

v.

JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, and VINTAGE ANCHOR PUBLISHING,

Defendants.

No. 06CH00772

Sheriff Please Serve:
Doubleday & Company, Inc.
c/o Registered Agent:
Prentice Hall Corporation
33 N. LaSalle Street
Chicago, IL 60602-2607

SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court at the following location:

☒ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602

☐ District 2 - Skokie, 5600 Old Orchard Rd., Skokie, IL 60077

☐ District 3 - Rolling Meadows, 2121 Euclid, Rolling Meadows, IL 60008

☐ District 4 - Maywood, 1500 Maybrook Ave., Maywood, IL 60153

☐ District 5 - Bridgeview, 10220 S. 76th Ave., Bridgeview, IL 60455

☐ District 6 - Markham, 16501 S. Kedzie Pkwy., Markham, IL 60426

You must file within 30 days after service of this summons, not counting the day of service.
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

Atty. No.: 31866
Name: Thomas E. Pakenas
Atty. for: Plaintiff
Address: 641 W. Lake Street, Suite 400
City/State/Zip: Chicago, IL 60661
Telephone: (312) 258-1800

WITNESS, JAN 19 2006

DOROTHY BROWN, CLERK OF CIRCUIT COURT

Dorothy Brown
Clerk of Court

Date of service: ______________________
(To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: ______________________
(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served By Publication
SUMMONS

2121 - Served
2221 - Not Served
2321 - Served By Mail
2421 - Served By Publication
ALIAS - SUMMONS

(Rev.12/3/01) CCG 0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

No. 06CH00772

(Name all parties)

PILAR MORE,

Plaintiff,

v.

JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, and VINTAGE ANCHOR PUBLISHING,

Defendants.

Sheriff Please Serve:
Doubleday & Company, Inc.
c/o Registered Agent:
Prentice Hall Corporation
33 N. LaSalle Street
Chicago, IL 60602-2607

SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court at the following location:

☒ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602

☐ District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077

☐ District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008

☐ District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153

☐ District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455

☐ District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60426

You must file within 30 days after service of this summons, not counting the day of service.
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

DOROTHY BROWN CLERK OF CIRCUIT COURT
WITNESS, JAN 17 2006

Dorothy Brown
Clerk of Court

Atty. No.: 31846
Name: Thomas E. Pakenas
Atty. for: Plaintiff
Address: 641 W. Lake Street, Suite 400
City/State/Zip: Chicago, IL 60661
Telephone: (312) 258-1800

Date of service: ____________
(To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: ____________
(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED 06 JAN 12 PM 1:50

PILAR MORE, Plaintiff,	)	
vs.	)	No.: 06CH00772
JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., and VINTAGE ANCHOR PUBLISHING, INC., Defendants.	)	

COMPLAINT- CLASS ACTION

MATTERS COMMON TO MULTIPLE COUNTS

INTRODUCTION

1. This action is brought by PILAR MORE to secure redress against JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., and VINTAGE ANCHOR PUBLISHING, INC., and each of them, for unfair and deceptive practices perpetrated on millions of persons who purchased the book "A MILLION LITTLE PIECES" written by Defendant James Frey and published by Defendants DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, and VINTAGE ANCHOR PUBLISHING, PILAR MORE is one of the purchasers of Defendant James Frey's book "A Million Little Pieces". PILAR MORE brings this class action on behalf of all persons who purchased the subject book based upon reliance on assertions of its truthful, honest, and non-fiction character.

PARTIES

2. Plaintiff is a woman who purchased Defendants' book "A Million Little Pieces" sometime after October 26, 2005.

3. Defendant, James Frey wrote the book "A Million Little Pieces" which was represented to be a work of non-fiction.

4. Defendants, Doubleday & Company, Inc., Random House, Inc., Knopf Publishing Group, Inc., and Vintage Anchor Publishing, Inc., are public corporations, doing business in Illinois, who published, promoted, and represented the book "A Million Little Pieces" as a work of non-fiction.

5. On information and belief, Defendants James Frey, Doubleday & Company, Inc., Random House, Inc., Knopf Publishing Group, Inc., and Vintage Anchor Publishing, Inc., sold millions of copies of the book "A Million Little Pieces" to consumers.

FRAUDULENT POLICIES AND PRACTICES

6. Defendant, JAMES FREY gave multiple interviews in print and on television, including but not limited to "The Oprah Winfrey Show" of October 26, 2005, representing his book "A Million Little Pieces" as a true and honest work of non-fiction.

7. Defendants, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., and VINTAGE ANCHOR PUBLISHING, INC., promoted and represented the book "A Million Little Pieces" as a work of non-fiction including but not limited to listing said book on the New York Times Non-fiction best seller list.

CLASS ALLEGATIONS

8. PILAR MORE brings this claim on behalf of a class. The class includes all persons who

purchased the book "A Million Little Pieces" written by Defendant James Frey and published by Defendant Doubleday & Company, Inc.

9. On information and belief, the class is so numerous that joinder of all members is impractical.

10. There are questions of law and fact common to the class members, which questions predominate over any questions affecting only individual class members. These questions include:

1. Whether each defendant engaged in the practices complained of.
2. Whether the practices complained of are a perpetration of fraud.
3. The appropriate remedy.

11. Plaintiff will fairly and adequately protect the interests of the class members. She is committed to vigorously litigating this matter. She has retained counsel experienced in handling all types of tortuous conduct claims. Neither plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this claim.

12. A class action is an appropriate method for the fair and efficient adjudication of this controversy. Most class members will not even realize that they have been the victim of fraud. A class action is essential to prevent a failure of justice.

WHEREFORE, Plaintiff requests that the Court grant the following relief to herself and the class members:

a. An order requiring a complete accounting of all sales of the book "A Million Little Pieces".

b. Appropriate damages.

purchased the book "A Million Little Pieces" written by Defendant James Frey and published by Defendant Doubleday & Company, Inc.

9. On information and belief, the class is so numerous that joinder of all members is impractical.

10. There are questions of law and fact common to the class members, which questions predominate over any questions affecting only individual class members. These questions include:

1. Whether each defendant engaged in the practices complained of.

2. Whether the practices complained of are a perpetration of fraud.

3. The appropriate remedy.

11. Plaintiff will fairly and adequately protect the interests of the class members. She is committed to vigorously litigating this matter. She has retained counsel experienced in handling all types of tortuous conduct claims. Neither plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this claim.

12. A class action is an appropriate method for the fair and efficient adjudication of this controversy. Most class members will not even realize that they have been the victim of fraud. A class action is essential to prevent a failure of justice.

WHEREFORE, Plaintiff requests that the Court grant the following relief to herself and the class members:

a. An order requiring a complete accounting of all sales of the book "A Million Little Pieces".

b. Appropriate damages.

c. An injunction against further representation and advertisements of the book "A Million Little Pieces" as non-fiction.

d. Costs.

e. Such other or further relief as the Court deems appropriate.

CONSUMER FRAUD VIOLATION BASED ON ILLINOIS CONSUMER FRAUD ACT

Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2, provides:

> **Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentations or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omissions of such materials fact, ... are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.**

13. Defendants JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., and VINTAGE ANCHOR PUBLISHING, INC., engaged in unfair and deceptive practices by promoting, advertising, asserting, and endorsing the book "A Million Little Pieces" as a true and honest work of non-fiction. The practice is unfair and deceptive because (a) consumers relied on these untrue assertions to motivate the purchase of the subject book and (b) consumers relied upon these untrue assertions as basis for an emotional investment, interest, and empathy for the central character.

14. Defendants engaged in such practices in the conduct of trade and commerce.

15. Defendant engaged in such practices with the intent of motivating consumers to purchase the book "A Million Little Pieces".

16. Plaintiff, PILAR MORE and the members of the class described below relied upon

Defendant's unfair and deceptive acts.

17. Plaintiff, PILAR MORE and the members of the class described below were harmed by defendant's practices, in that they expended money for the purchase of the book "A Million Little Pieces" and expended valuable amounts of time in the reading of said book.

CLASS ALLEGATIONS

18. PILAR MORE, brings this claim on behalf of a class. The class includes all persons who purchased the book "A Million Little Pieces" written by Defendant James Frey and published by Defendant Doubleday & Company, Inc.

19. On information and belief, the class is so numerous that joinder of all members is impractical.

20. There are questions of law and fact common to the class members, which questions predominate over any questions affecting only individual class members. These questions include:

1. Whether each defendant engaged in the practices complained of.
2. Whether the practice complained of is consumer fraud.
3. The appropriate remedy.

21. Plaintiff will fairly and adequately protect the interests of the class members. She is committed to vigorously litigating this matter. She has retained counsel experienced in handling all types of tortuous conduct claims. Neither plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this claim.

22. A class action is an appropriate method for the fair and efficient adjudication of this controversy. Most class members will not even realize that they have been a victim of fraudulent

conduct. A class action is essential to prevent a failure of justice.

WHEREFORE, plaintiff requests that the Court grant the following relief to herself and the class members:

a. An order requiring a complete accounting of sales of the book "A Million Little Pieces".

b. Appropriate compensatory and punitive damages.

c. An injunction against further representation and advertising of the book "A Million Little Pieces" as non-fiction.

d. Attorney's fees, litigation expenses, and costs.

e. Such other or further relief as the Court deems appropriate.

Respectfully submitted,

By: [signature]

Thomas E. Pakenas

Dale and Pakenas
641 W. Lake Street, Suite 400
Chicago, IL 60661
(312) 258-1800
Attorney Code: 31846

EXHIBIT B

DECLARATION OF DONALD WEISBERG

Pursuant to 28 U.S.C. § 1746, Donald Weisberg declares and states as follows:

1. My name is Donald Weisberg. I am over the age of 21 and am competent to testify as to the statements set forth in this declaration.

2. I am currently the Executive-Vice President and Chief Operating Officer, North America, of Random House, Inc. ("Random House"), a position I have held since November 2001. In my position, I am familiar with sales figures for books published by Random House and its related corporate entities.

3. I am familiar with the book "A Million Little Pieces," by James Frey. In 2003, "A Million Little Pieces" was published in hardcover by Nan A. Talese, an imprint of Doubleday, a division of Random House. In 2005, "A Million Little Pieces" was published in paperback by Anchor Books, a division of Random House.

4. The suggested retail price of the hardcover edition of the book was $22.95. The suggested retail price for the paperback edition of the book was $14.95.

5. I have reviewed sales figures for "A Million Little Pieces" maintained by Random House in the normal and ordinary course of its business. Through January 7, 2006, Random House sold and shipped to retailers more than 2.5 million copies of the paperback edition. Based on the suggested retail price listed above, the total amount of sales to consumers of "A Million Little Pieces" exceeds $5,000,000.

6. I have also reviewed retail "point of sales" data provided by certain third-parties. Based on this data, I have determined that copies of "A Million Little Pieces" were sold to consumers in all fifty states and that sales to consumers in no single state accounted for more than 33 percent of the total sales to consumers.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on February 16, 2006 at NEW YORK NEW YORK.

Donald Weisberg

CERTIFICATE OF SERVICE

Michael C. Andolina, an attorney, hereby certifies that he caused a true and correct copy of the foregoing **NOTICE OF REMOVAL** to be served by messenger on:

Thomas E. Pakenas
Dale & Pakenas
641 W. Lake Street, Suite 400
Chicago, IL 60661

on this 21st day of February 2006.

Michael C. Andolina

CHI 3441923v.2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANN MARIE STRACK, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., VINTAGE ANCHOR PUBLISHING, INC., BARNES AND NOBLE, INC., BARNES AND NOBLE BOOKSELLERS, INC., and BARNES AND NOBLE PUBLISHING, INC.,

Defendants.

06C 0833

JUDGE GRADY

MAGISTRATE JUDGE KEYS

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, defendants Random House, Inc. ("Random House") and Doubleday & Company, Inc. ("Doubleday") (collectively "Defendants") hereby remove to this Court the above-styled action, pending as Case No. 06-CH-01877 in the Circuit Court of Cook County, Illinois County Department, Chancery Division ("the State Court Action"). As grounds for removal, Defendants states as follows:

Factual Background

1. On January 27, 2006, Plaintiff Ann Marie Strack filed the State Court Action in the Circuit Court of Cook County, Illinois County Department, Chancery Division.

2. To date, neither defendant Doubleday nor defendant Random House has been served with the summons and complaint ("Cmplt.") in this action.

3. The complaint arises out of the publishing and marketing of the book "A Million Little Pieces" (the "Book") written by defendant James Frey. (Cmplt ¶ 12).

4. The complaint contains four counts which seek relief against Defendants: Breach of Implied Warranty of Merchantability (Count I), Breach of Express Warranty (Count II), Consumer Fraud and Deceptive Business Practices Action (Count III), and Unjust Enrichment (Count IV).[1]

5. Plaintiff is a citizen of the State of Illinois. (Cmplt. ¶ 1).

6. Defendant Random House is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.

7. Defendant Doubleday is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York., and thus is a citizen of New York for these purposes.

8. Defendant Frey is a citizen of the State of New York.

9. Plaintiff seeks to pursue her claims on behalf of a nationwide class of "[a]ll purchasers of the *A Million Little Pieces*. . ." (Cmplt. ¶ 16).

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[1] In addition to defendants Frey, Doubleday, and Random House, the Complaint purports to name as defendants "Knopf Publishing Group, Inc.," and "Vintage Anchor Publishing, Inc.," neither of which are corporate entities. Alfred A. Knopf, Vintage Books, and Anchor Books are divisions of Random House, Inc. Defendants Doubleday and Random House will move at the appropriate time to have these alleged parties dismissed from the action.

Federal Jurisdiction under the Class Action Fairness Act

10. Application of CAFA. The Court has original jurisdiction of this case pursuant to the Class Action Fairness Act of 2005 ("CAFA" or "the Act"). CAFA creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and the number of members of all proposed plaintiff classes exceeds 100. 28 U.S.C. § 1332(d)(2)(A) and (d)(5).[2] As explained below, each of these criteria are met here.

11. Amount in Controversy. The aggregate amount in controversy in this case exceeds $5,000,000, exclusive of interest and costs. Under various legal theories, Plaintiffs seek to recover "financial damages associated with their purchase of the Book" (Cmplt. ¶ 28 (p. 7), ¶ 28 (p. 9), ¶ 33(p. 12), which presumably include the purchase price of the Book. Based on sales of the Book, the amount in controversy exceeds the $5,000,000 threshold. (Declaration of Donald Weisberg, Exhibit B hereto, at ¶ 5).[3] The book was sold in both hardcover and paperback editions. *Id.* at ¶ 4. More than 2.5 million copies of the paperback edition were sold with a suggested retail price of $14.95. *Id.* at ¶ 5. These figures demonstrate that in excess of $5,000,000 is at issue in this case. *Id.*

12. Citizenship of the Parties. There is diversity of citizenship between a member of the putative class and defendants Doubleday and Random House:

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[2] CAFA applies to any action commencing on or after February 18, 2005 – the date when CAFA was enacted. *See* CAFA § 9 ("The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.")

[3] Defendants deny that Plaintiff has stated a claim or that certification of a statewide or nationwide class would be appropriate. Defendants further deny that plaintiff or any putative class member is entitled to any relief whatsoever.

a. Plaintiff is a citizen of Illinois and there are putative plaintiffs in all 50 states. (*See* D. Weisberg Dec., Ex. B, at ¶ 6.)

b. Defendants Doubleday and Random House are New York corporations with their principal places of business in New York, New York, and thus are citizens of New York for these purposes.

c. Defendant Frey is a citizen of the State of New York.

d. Accordingly, this action is a class action where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

13. Number of Class Members. As the above figures indicate, there are more than 100 class members.

14. Mandatory Jurisdiction. CAFA classifies qualifying class actions (i.e., ones in which the $5 million amount-in-controversy is met) by the number of class members located in the state where the action is filed and the citizenship of the defendants. Where less than 1/3 of the class members are located in the state where the action is filed, federal courts are required to accept jurisdiction. *See* 28 U.S.C. § 1332(d)(2). Where more than 1/3 but less than 2/3 of the class members are located in the state where the action is filed, courts are required to apply a group of factors to determine whether to accept jurisdiction. *See* 28 U.S.C. § 1332(d)(3). Where more than 2/3 of the class members are located in the state where the action is filed and certain other criteria are met, courts are required to decline jurisdiction. *See* 28 U.S.C. § 1332(d)(4). In this case, federal jurisdiction over this action is mandatory, not permissive, under

CAFA because defendants Doubleday and Random House are not citizens of Illinois and less than 1/3 of the class members are citizens of Illinois. *See* D. Weisberg Dec., Ex. B, at ¶ 6.; 28 U.S.C. § 1332(d)(3) and (d)(4).

Procedural Matters

15. Removal is Timely. A notice of removal may be filed within 30 days after the defendant receives a copy of the initial pleading, motion, or other paper from which it may be ascertained that the case is removable. 28 U.S.C. § 1446(b). The United States Supreme Court has held that the 30-day period prescribed in section 1446(b) runs from the date of formal service of the complaint. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355-56 (1999). To date, neither Random House nor Doubleday has been served in this action. This notice of removal is thus timely.

16. Removal to Proper Court. This Court is part of the "district and division embracing the place where" the State Court Action was filled – Cook County, Illinois. 28 U.S.C. § 1446(a).

17. Consent Not Required. Pursuant to 28 U.S.C. § 1453(b), the consent of other defendants to this removal is not required.

18. Pleadings and Process. Neither Random House nor Doubleday has been served in this action, but Defendants are aware that other defendants have been served and Defendants have received a copy of the Complaint, which is attached hereto as Exhibit A. Neither Random House nor Doubleday has answered or otherwise filed a responsive pleading to the complaint.

19. Filing and Service. A copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Cook County, Illinois, and is being served on all counsel of record, consistent with 28 U.S.C. § 1446(d). The Circuit Court of Cook County, Illinois, is located within this district.

WHEREFORE, defendants Random House, Inc. and Doubleday & Company, Inc. respectfully remove this action, now pending in the Circuit Court of Cook County, Illinois County Department, Chancery Division to the United States District Court for the Northern District of Illinois.

Respectfully Submitted,

RANDOM HOUSE, INC. and
DOUBLEDAY & COMPANY, INC.

By: [signature]

One of Their Attorneys

Mark B. Blocker
Michael C. Andolina
Marissa J. Reich
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Of counsel:

Stephen G. Contopulos
Jennifer A. Ratner
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
(213) 896-6000

Dated: February 21, 2006

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

PM 3:54

ANN MARIE STRACK, individually, and on behalf of all others similarly situated, Plaintiff, vs. JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., VINTAGE ANCHOR PUBLISHING, INC., BARNES AND NOBLE, INC., BARNES AND NOBLE BOOKSELLERS, INC., BARNES AND NOBLE PUBLISHING, INC., Defendants.	)	No.

NATIONAL CLASS ACTION COMPLAINT

THE PARTIES

A. The Plaintiff

1. ANN MARIE STRACK ("STRACK") is a resident of the county of Cook, State of Illinois.

B. The Defendants

2. Defendant JAMES FREY ("FREY") wrote the book *A Million Little Pieces* ("BOOK").

3. Defendants DOUBLEDAY & COMPANY, INC. ("DOUBLEDAY"), RANDOM HOUSE, INC. ("RANDOM"), KNOPF PUBLISHING GROUP, INC. ("KNOPF"), VINTAGE ANCHOR PUBLISHING, INC. ("VINTAGE"), and BARNES AND NOBLE, INC., BARNES

AND NOBLE BOOKSELLERS, INC. and BARNES AND NOBLE PUBLISHING, INC. (collectively "BARNES") are corporations or corporate divisions, doing business in Cook County, Illinois, who published, promoted and sold the BOOK.

JURISDICTION AND VENUE

4. The Circuit Court of Cook County has subject matter jurisdiction over this matter, pursuant to Article 6 of the Constitution of the State of Illinois.

5. The Circuit Court of Cook County is the proper venue (under 735 ILCS 5/2-101) and has personal jurisdiction over the Defendants under 735 ILCS 5/2-209, because (a) one or more of the alleged wrongful acts took place in Cook County, Illinois, and (b) Defendants transact substantial business there. Jurisdiction is also proper under the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/10(a).

FACTUAL BACKGROUND

6. FREY initially tried to sell the BOOK to a publisher as a work of fiction. When no publisher would accept the BOOK for publication as fiction, FREY simply reclassified it as a non-fictional memoir / autobiography.

7. FREY represented and promoted the BOOK as being a non-fictional memoir / autobiography. FREY gave multiple interviews in print and on television, including a November 2002 letter to book reviewers and an appearance on the *Oprah Winfrey Show* on October 26, 2005, wherein he represented the BOOK as a true and honest work of non-fiction.

8. DOUBLEDAY, RANDOM, KNOPF, VINTAGE and BARNES advertised, represented, promoted and sold the BOOK as being a non-fictional memoir / autobiography, including printing the word "memoir" on the BOOK's cover, including a quote in the BOOK that

"the strength of the book comes from the truth of the experience," and listing the BOOK on the *New York Times* non-fiction best seller list.

9. A "memoir" is defined as (a) "an official note or report," (b) "a narrative composed from personal experience," (c) an "autobiography," and (d) a "biography." *Merriam-Webster* Dictionary. An "autobiography" is defined as "a biography of a person narrated by himself." *Merriam-Webster* Dictionary. A "biography" is defined as "a written history of a person's life." *Merriam-Webster* Dictionary.

10. "Non-fiction" is defined as "literature that is not fictional." *Merriam-Webster* Dictionary. "Fiction" is defined as "something invented by the imagination or feigned," and "an invented story." *Merriam-Webster* Dictionary.

11. The BOOK was not a non-fictional memoir / autobiography. Virtually every account in the BOOK contained misrepresentations, embellishments and lies. FREY admitted to this during his second appearance on the *Oprah Winfrey Show* on January 26, 2006. Some examples of the misrepresentations are, as follows:

(a) FREY was not arrested several times while attending Dennison University;

(b) FREY's Granville, Ohio arrest did not involve the assault and beating from police, 0.29 BAC, crack cocaine, attempted riot inciting, or resisting arrest;

(c) FREY's Ohio jail time did not involve 5 - 7 deputies watching over him, or bars or barred doors;

(d) FREY's Michigan and North Carolina arrests did not involve narcotics possession;

(e) FREY was not involved in the deaths or death investigations of the St. Joseph High School girls;

(f) FREY's girlfriend did not commit suicide by hanging herself;

(g) FREY did not spend a week in jail in the Berrien County jail;

(h) FREY was not the chief target in an FBI probe into drug activity at Denison University.

12. Defendants purposefully omitted from the BOOK, and from their promotional statements and materials, any statements to inform prospective purchasers that the BOOK was not a non-fictional memoir / autobiography, and that the BOOK contained misrepresentations, embellishments and lies. All Defendants had actual knowledge of said information that they omitted at the time the BOOK was initially published and sold.

13. All of Defendants' foregoing representations and omissions were uniform nationwide.

14. In reliance on said representations and omissions of Defendants, the Plaintiff and Class purchased the BOOK.

CLASS ALLEGATIONS

15. At all relevant times herein, there existed in full force and effect a certain statute which provides for the prerequisites of a class action. The statute states:

> "An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:
>
> (1) The class is so numerous that joinder of all members is impracticable.
>
> (2) There are questions of fact or law common to the class, which common questions predominate over any question affecting only individual members.
>
> (3) The representative parties will fairly and adequately protect the interest of the class.
>
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy."
>
> [See 735 ILCS 5/2-801].

Class Definition

16. Plaintiff seeks to certify a nationwide Class, defined as follows:

All purchasers of the book *A Million Little Pieces.*

Excluded from the Plaintiffs Class are the Defendants, any entity in which Defendants have a controlling interest, and their legal representatives, heirs, and successors.

Numerosity

17. On information and belief, Defendants sold the BOOK to over 3 million people in Illinois and throughout the United States, and the Defendants are continuing to sell the BOOK.

18. Therefore, joinder of all members of the Class is impracticable.

Common Questions of Fact and Law

19. There are questions of fact or law common to the Class of Plaintiffs, which common questions predominate over any questions affecting only individual members. The common questions of fact and law include at least the following:

(a) Whether the Defendants violated State consumer fraud and deceptive business practices acts;

(b) Whether the Defendants knew or became aware that they were unjustly retaining their customer's money, yet continued to make the false representations while concealing the scheme from the public and the Class;

(c) Whether the Defendants engaged in a pattern and practice of deceiving and defrauding the Class and suppressing the fraudulent nature of their practice;

(d) Whether the Defendants knew that their representation that the BOOK was a non-fictional memoir / autobiography was false;

(e) Whether the accounts in the BOOK were embellished and/or false;

(f) Whether the Defendants breached their express and implied warranties to the Plaintiff and members of the Plaintiff's Class;

(g) Whether the Defendants were unjustly enriched;

(h) Whether the Plaintiff and the members of the Plaintiff's Class have suffered damages, and if so the extent of such damages.

Adequacy and Typicality of Representative Party

20. The claims of the representative Plaintiff are typical of the claims of the Class. The Representative Plaintiff purchased the BOOK in reliance on the uniform misrepresentations and omissions of the Defendants.

21. The Representative Plaintiff will fairly and adequately protect the interest of the Class. The Plaintiff is committed to the vigorous prosecution of this action and has retained competent, qualified and experienced counsel able to prosecute the action on behalf of the Class.

Appropriateness of a Class Action

22. This class litigation is an appropriate method for fair and efficient adjudication of the claims involved, and would avoid the prosecution of separate actions by individual members of the Class which would create a risk of inconsistent or varying adjudications with respect to individual members of the Class.

COUNT I
(Breach of Implied Warranty of Merchantability)

NOW COMES Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, by and through counsel, and for her complaint against Defendants JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., VINTAGE ANCHOR PUBLISHING, INC., BARNES AND NOBLE, INC., BARNES AND NOBLE BOOKSELLERS, INC., and BARNES AND NOBLE PUBLISHING, INC., states as follows:

1. Plaintiff repeats and realleges Paragraphs one (1) through twenty-two (22) above as Paragraphs one (1) through twenty-two (22) of this Count I, with the same force and effect as though fully set forth herein.

23. All of the States nationwide, including the District of Columbia, have adopted the Uniform Commercial Code § 2-314 (implied warranty of merchantability).

24. Defendants sold the BOOK to the Plaintiff and Class plaintiffs, and such sales are transactions in goods under the UCC.

25. Defendants are merchants with respect to the aforementioned BOOK, as they deal in goods of that kind, and hold themselves out as having knowledge or skill peculiar to the goods involved in this transaction.

26. A warranty that the BOOK, that the Plaintiff and the Class purchased, shall be merchantable was implied in the contract for their sale, as between Defendants and Plaintiff and the Class.

27. Defendants breached their implied warranty of merchantability, as at all times relevant herein, and at the time the Plaintiff and Class purchased the BOOK, the BOOK was defective, and not merchantable or fit for the ordinary purpose for which it was to be used, inasmuch as the BOOK was not a non-fictional memoir / autobiography.

28. Plaintiff purchased the BOOK, prior to Defendants' public disclosure that the BOOK was not a non-fictional memoir / autobiography. As a direct and proximate cause of the foregoing, the Plaintiff and Class suffered financial damages associated with their purchase of the BOOK.

29. Defendants had actual knowledge that the BOOK was not a non-fictional memoir / autobiography at the time it was first published and sold; thus, the UCC notification requirement is excused.

WHEREFORE, Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, prays that the Court enter an order as follows:

(a) Finding Defendants in breach of their implied warranty of merchantability;

(b) Certifying the Class;

(c) Appointing the attorneys herein as Class counsel for the Class;

(d) Ordering Defendants to provide compensation to the Plaintiff and the Class; and

(e) Awarding the Class reasonable attorneys' fees in addition to any funds recovered from this suit.

COUNT II
(Breach of Express Warranty)

NOW COMES Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, by and through counsel, and for her complaint against Defendants JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., VINTAGE ANCHOR PUBLISHING, INC., BARNES AND NOBLE, INC., BARNES AND NOBLE BOOKSELLERS, INC., and BARNES AND NOBLE PUBLISHING, INC., states as follows:

1. Plaintiff repeats and realleges Paragraphs one (1) through twenty-two (22) above as Paragraphs one (1) through twenty-two (22) of this Count II, with the same force and effect as though fully set forth herein.

23. All of the States nationwide, including the District of Columbia, have adopted the Uniform Commercial Code § 2-313 (express warranty).

24. Defendants sold the BOOK to the Plaintiff and the Class, and such sales are transactions in goods under the UCC.

25. Defendants are merchants with respect to the aforementioned BOOK, as they deal in goods of that kind, and hold themselves out as having knowledge or skill peculiar to the goods involved in this transaction.

26. Through their uniform promotional statements and materials, and their uniform omissions, Defendants made an affirmation of fact or promise to Plaintiff and the Class to the effect that the BOOK was a non-fictional memoir / autobiography, as set forth above.

27. Defendants breached their express warranty, as at all times relevant herein, and at the time Plaintiff and the Class purchased the BOOK, the BOOK was not a non-fictional memoir / autobiography, and virtually every account in the BOOK contained misrepresentations, embellishments and lies.

28. Plaintiff purchased the BOOK, prior to Defendants' public disclosure that the BOOK was not a non-fictional memoir / autobiography. As a direct and proximate cause of the foregoing, the Plaintiff and Class suffered financial damages associated with their purchase of the BOOK.

29. Defendants had actual knowledge that the BOOK was not a non-fictional memoir / autobiography at the time it was first published and sold; thus, the UCC notification requirement is excused.

WHEREFORE, Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, pray that the Court enter an order as follows:

(a) Finding Defendants in breach of their express warranty;

(b) Certifying the Class;

(c) Appointing the attorneys herein as Class counsel for the Class;

(d) Ordering Defendants to provide compensation to the Plaintiff and the Class; and

(e) Awarding the Class reasonable attorneys' fees in addition to any funds recovered from this suit.

COUNT III
(Consumer Fraud and Deceptive Business Practices Action)

NOW COMES Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, by and through counsel, and for her complaint against Defendants JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., VINTAGE ANCHOR PUBLISHING, INC., BARNES AND NOBLE, INC., BARNES AND NOBLE BOOKSELLERS, INC., and BARNES AND NOBLE PUBLISHING, INC., states as follows:

1. Plaintiff repeats and realleges Paragraphs one (1) through twenty-two (22) above as Paragraphs one (1) through twenty-two (22) of this Count III, with the same force and effect as though fully set forth herein.

23. All of the States nationwide, including the District of Columbia, have adopted consumer fraud and deceptive business practices acts, which generally declare unlawful the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact. Therefore, Plaintiff asserts the same claim under the consumer fraud and deceptive business practices acts of all of the States nationwide, including the District of Columbia.

24. At all relevant times, Defendants marketed, promoted and sold the BOOK.

25. At all relevant times, the BOOK was a product within the meaning of the various State consumer fraud and deceptive business practices acts, and was available for purchase and use by individuals and businesses.

26. At all relevant times, Plaintiff and the Class were consumers within the meaning of the various State consumer fraud and deceptive business practices acts, as they purchased the BOOK.

27. At all relevant times, the BOOK was offered for trade or commerce, under the various State consumer fraud and deceptive business practices acts, as the BOOK was advertised, offered for sale, sold or distributed directly or indirectly to the Plaintiff and the Class.

28. Defendants engaged in the unlawful and unfair deception, fraud, false pretense, false promise, and misrepresentation that the BOOK was a non-fictional memoir / autobiography, as set forth above.

29. Defendants' practice of misrepresenting that the BOOK was a non-fictional memoir / autobiography, as set forth above, is unfair because: (a) the practice offends public policy; (b) the practice is immoral, unethical, oppressive, or unscrupulous, and (c) the practice caused substantial injury to consumers.

30. Defendants purposefully omitted material facts, which include that the BOOK was not a non-fictional memoir / autobiography, and virtually every account in the BOOK contained misrepresentations, embellishments and lies.

31. Defendants engaged in the aforementioned misconduct with the intent that others, such as the Plaintiff, rely thereupon and purchase the BOOK.

32. Had the Plaintiff and the Class known the true facts, they would not have purchased the BOOK.

33. Plaintiff purchased the BOOK, prior to Defendants' public disclosure that the BOOK was not a non-fictional memoir / autobiography. As a direct and proximate cause of the foregoing, the Plaintiff and Class suffered financial damages associated with their purchase of the BOOK.

WHEREFORE, Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, pray that the Court enter an order as follows:

(a) Finding Defendants violated the various State consumer fraud and deceptive business practices acts;

(b) Certifying the Class;

(c) Appointing the attorneys herein as Class counsel for the Class;

(d) Ordering Defendants to provide compensation to the Plaintiff and the Class; and

(e) Awarding the Class reasonable attorneys' fees in addition to any funds recovered from this suit.

COUNT IV
(Unjust Enrichment)

NOW COMES Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, by and through counsel, and for her complaint against Defendants JAMES FREY, DOUBLEDAY & COMPANY, INC., RANDOM HOUSE, INC., KNOPF PUBLISHING GROUP, INC., VINTAGE ANCHOR PUBLISHING, INC., BARNES AND NOBLE, INC., BARNES AND NOBLE BOOKSELLERS, INC., and BARNES AND NOBLE PUBLISHING, INC., states as follows:

1. Plaintiff repeats and realleges Paragraphs one (1) through thirty-three (33) of Count III as Paragraphs one (1) through thirty-three (33) of this Count IV, with the same force and effect as though fully set forth herein.

34. Defendants are unjustly enriched, as they unjustly retained the money paid for the BOOK to the detriment of the Plaintiff and Class, and the Defendants' retention of that benefit violates fundamental principles of justice, equity and good conscience, as they were paid the money under false pretenses.

35. Defendants accepted the benefit from their retaining the money paid for the BOOK, and it would be inequitable for the Defendants to retain those monies as they were paid the money under false pretenses.

36. Defendants obtained money to which they are not entitled, and under these circumstances equity and good conscience require that the Defendants return the money to the Plaintiff and the Class. Thus, the rightful owner of the money (i.e. the Plaintiff and the Class) can claim it through the imposition of a constructive trust to avoid unjust enrichment, and even if the Defendants may have acted in good faith it does not prevent recovery of the sums paid.

37. A constructive trust is further necessary because of the existence of mutual accounts which are of a complex nature, and the need to conduct discovery as to the specific amounts paid by each of the Plaintiffs in the Class.

WHEREFORE, Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated, pray that the Court enter an order as follows:

(a) Certifying the Class;

(b) Appointing the attorneys herein as Class counsel for the Class;

(c) Declaring Defendants as being constructive trustees for the monies they retained for the BOOK;

(d) Ordering that all monies Defendants retained for the BOOK to date be deposited in an interest bearing escrow account;

(e) Ordering that all monies Defendants retain for the BOOK in the future be deposited in an interest bearing escrow account;

(f) Ordering Defendants to identify the specific amounts of those monies that were collected and received from each individual;

(g) Ordering Defendants to provide compensation to the Plaintiff and the Class;

(h) Awarding the Class reasonable attorneys' fees in addition to any funds recovered from this suit; and

(i) Ordering Defendants to render an accounting for all sums received from the sale of the BOOKs purchased by the Class, and for judgment on that accounting.

Plaintiff ANN MARIE STRACK, individually, and on behalf of all others similarly situated,

By: ______________________

Thomas A. Zimmerman, Jr.
ZIMMERMAN AND ASSOCIATES, P.C.
100 West Monroe
Suite 1300
Chicago, Illinois 60603
(312) 440-0020
Firm No. 34418

Counsel for the Plaintiff and Class

EXHIBIT B

DECLARATION OF DONALD WEISBERG

Pursuant to 28 U.S.C. § 1746, Donald Weisberg declares and states as follows:

1. My name is Donald Weisberg. I am over the age of 21 and am competent to testify as to the statements set forth in this declaration.

2. I am currently the Executive-Vice President and Chief Operating Officer, North America, of Random House, Inc. ("Random House"), a position I have held since November 2001. In my position, I am familiar with sales figures for books published by Random House and its related corporate entities.

3. I am familiar with the book "A Million Little Pieces," by James Frey. In 2003, "A Million Little Pieces" was published in hardcover by Nan A. Talese, an imprint of Doubleday, a division of Random House. In 2005, "A Million Little Pieces" was published in paperback by Anchor Books, a division of Random House.

4. The suggested retail price of the hardcover edition of the book was $22.95. The suggested retail price for the paperback edition of the book was $14.95.

5. I have reviewed sales figures for "A Million Little Pieces" maintained by Random House in the normal and ordinary course of its business. Through January 7, 2006, Random House sold and shipped to retailers more than 2.5 million copies of the paperback edition. Based on the suggested retail price listed above, the total amount of sales to consumers of "A Million Little Pieces" exceeds $5,000,000.

6. I have also reviewed retail "point of sales" data provided by certain third-parties. Based on this data, I have determined that copies of "A Million Little Pieces" were sold to consumers in all fifty states and that sales to consumers in no single state accounted for more than 33 percent of the total sales to consumers.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on February 16, 2006 at NEW YORK, NEW YORK.

Donald Weisberg

CERTIFICATE OF SERVICE

Michael C. Andolina, an attorney, hereby certifies that he caused a true and correct copy of the foregoing **NOTICE OF REMOVAL** to be served by messenger on:

Thomas A. Zimmerman, Jr.
ZIMMERMAN AND ASSOCIATES, P.C.
100 West Monroe, Suite 1300
Chicago, Illinois 60603
(312) 440-0020

on this 21st day of February 2006.

Michael C. Andolina